

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

1: 08-CV-04305

1: 08-CV-04306

MAYNE MILLER,

Debtor

-----X
MAYNE MILLER,

Appellant

APPELLEE'S RESPONSE

v.

JEFFREY L. SAPIR, as Chapter 13 Trustee,
Appellee

-----X

Jeffrey L. Sapir, respectfully represents the following:

1. He is the Standing Chapter 13 Trustee for the Southern District of New York, and is fully familiar with the facts and circumstances of this case.
- 2 This is submitted pursuant to direction of this Court (Honorable John G. Koetl) for a response by Appellee to the Appellant's motion for reconsideration of the dismissal and motion for consolidation.
3. Presently before this Court are two (2) appeals from two (2) orders of the Bankruptcy Court. The first appeal, (1:08-CV-04305) refers to the appeal from the order of Judge Peck of the Bankruptcy Court. That order was dated January 4, 2008, and it granted relief from the automatic stay to creditor 79 East Owners, LLC.
4. While Jeffrey L. Sapir is apparently the named appellee in that proceeding, the trustee takes no position on its outcome. The trustee did not appear or file any papers. This was a dispute between debtor and landlord.
5. The second appeal pending in this Court (1:08-CV-04306) refers to

the appeal from the order of Judge Glenn of the Bankruptcy Court dated January 24, 2008, which granted the Chapter 13 Trustee's motion to dismiss the Bankruptcy proceeding. Jeffrey L. Sapir is the properly names appellee in this proceeding. Appellant's time to file the brief on appeal from this case is extended twenty-one (21) days from July 2, 2008 by order of this Court. Appellant sought by way of order to show cause a stay pending the appeal. The hearing was held before Judge Richard Berman and no stay was granted. The motion for reconsideration was also denied.

6. Regarding dismissal of the first appeal (1:08-CV-04305) the trustee takes no position. The original matter before Judge Peck was a motion to vacate the automatic stay for which is an issue the Chapter 13 Trustee takes no position. The trustee has no knowledge of whether documents were properly or timely filed.

7. Regarding the appellant's motion for consolidation of the two appeals, the trustee sees no cause and opposes the request. The appeals, while part of the same bankruptcy filing, stem from two different orders of two difference judges. The appellant's burden of showing that each judge was clearly erroneous should be handled separately. The issues before each judge were completely distinct and based on separate Bankruptcy Code sections.

8. This Court should also be aware that the debtor filed a subsequent Chapter 13, Case No. 08-11418 MG, and is presently pursuing that case.

WHEREFORE, it is respectfully requested that the motion for consolidation be denied.

**Dated: White Plains, New York
July 15th, 2008**

/s/ Jeffrey L. Sapir
Jeffrey L. Sapir (JLS 0938)
Chapter 13 Trustee
399 Knollwood Road
White Plains, New York 10603
Tel. 914-328-7272

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SOUTHERN DISTRICT OF NEW YORK

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Case No. 08-CV-[M-47]

MAYNE MILLER,

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MAYNE MILLER,

Appellant

v.

JEFFREY L. SAPIR, as Chapter 13 Trustee,
Appellee

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

Lois Rosemarie Esposito, being duly sworn, deposes and says:

I am not a party to the action herein, I am over the age of 18 years and
reside in the County of Westchester, State of New York.

On July 15th, 2008 I served a true copy of the within document, to the
herein listed parties at the address(es) designated for that purpose, by mailing same in a
properly sealed envelope as follows:

TO:: United States Trustee
33 Whitehall Street
New York, New York 10004

Mayne Miller, Esq.
21-55 45th Road, 2nd Floor
Long Island City, New York 10111

Mayne Miller, Esq.
P.O. Box 8050 GPO
New York, New York 10116

Mitofsky, Shapiro, Neville & Hazen, Esqs.
152 Madison Avenue
New York, New York 10016

/s/ Lois Rosemarie Esposito
Lois Rosemarie Esposito

Sworn to before me this
15th day of July, 2008

/s/ Jeffrey L. Sapir

Jeffrey L. Sapir
Notary Public, State of New York
No. 60-8764500
Qualified in Rockland County
Cert. Filed in Westchester County
Term Expires: 12/31/10